

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-03-DL-228
)	
SM Radio, Inc.)	NAL/Acct. No.200332500011
Licensee of KUOL(AM) in San Marcos, Texas)	FRN 0010045532
McAllen, Texas)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: December 19, 2003

By the Enforcement Bureau, Dallas Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find SM Radio Inc. (“SM”), licensee of radio station KUOL, San Marcos, Texas, apparently liable for a forfeiture in the amount of seven thousand dollars (\$7,000) for willful violation of Section 73.1125 of the Commission's Rules (“Rules”). Specifically, we find SM apparently liable for failure to maintain a main studio presence in the community of license.

II. BACKGROUND

2. On October 28, 2003, an agent from the FCC Enforcement Bureau's Dallas Field Office (“Dallas Office”) attempted an inspection of AM broadcast station KUOL in San Marcos, Texas. A building located at the station's tower site appeared to be the studio for KUOL however the building was locked, unattended, and appeared to be abandoned. Further investigation revealed SM had no other physical presence in San Marcos, TX. A notice was posted on the door of KUOL's studio that listed the names and telephone numbers for the Station Manager and Chief Engineer. These personnel could not be reached at the telephone numbers provided and there was no listing for them in local telephone directories. The notice further stated that the control point and EBS equipment for station KUOL was located in the Hays County Law Enforcement Center. The Law Enforcement Center advised the Dallas FCC agent station KUOL removed their equipment 10 or 12 years ago.

3. On October 28, 2003, Mr. Gilbert Martinez, technical representative for SM advised the Dallas FCC agent that the building at the tower site served as KUOL's main studio. Additionally, Mr. Martinez stated the only station personnel in San Marcos, Texas, was Mr. Mendoza, an unpaid volunteer from a local church. Mr. Martinez further stated that Mr. Mendoza was available to travel to the tower site/studio and perform a variety of tasks if requested.

4. On October 28, 2003, the agent from the Dallas Office contacted the San Marcos Area Chamber of Commerce and requested information on AM broadcast station KUOL. The Chamber of

Commerce was un-aware KUOL was operating in San Marcos, TX. The Chamber of Commerce provided a copy of the San Marcos Telephone Directory, the Mid-Cities Regional Telephone Directory, and a listing of the radio stations operating in the San Marcos, TX area. None of these documents contained a listing for radio station KUOL or SM Radio, Inc. A telephone number for broadcast station KUOL was located in the Broadcasting & Cable Yearbook 2003-2004. The telephone number (956-686-6382) is answered in McAllen, TX area approximately 250 miles south of San Marcos.

5. On December 16, 2003, the Dallas FCC agent telephoned directory assistance and requested telephone numbers for radio station KUOL and SM Radio, Inc. A telephone number was provided for radio station KUOL as 512-396-1470. When attempting to contact radio station KUOL at this number, a recording advises the telephone number has been disconnected or is not in service.

III. DISCUSSION

6. Section 73.1125 requires the licensee of a broadcast station to maintain a main studio at one of the following locations: (1) within the station's community of license; (2) at any location within the principal community contour of any AM, FM or TV broadcast station licensed to the station's community of license; or (3) within twenty five miles from the reference coordinates of the center of its community of license. In adopting the main studio rules, the Commission stated that the station's main studio must have the capability to serve the needs and interests of the residents of the station's community of license.¹ To fulfill this function, a station, among other things, must maintain a meaningful presence at its main studio.² The Commission has defined a minimally acceptable "meaningful presence" as full-time managerial and full-time staff personnel.³ The licensee need not have the same staff person and manager at the studio, as long as there was management and staff presence there during normal business hours.⁴ Although management personnel need not be "chained to their desks" during normal business hours, they must "report at the main studio on a daily basis, spend a substantial amount of time there and ... use the studio as a home base."⁵ On October 28, 2003, SM failed to maintain a main studio in the community of license for AM broadcast station KBRN or at any of the other permissible locations discussed above. Additionally there was no managerial or staff presence in the community of license.

7. Section 73.1125(e) of the Rules⁶ requires each AM, FM, TV and Class A TV broadcast station to maintain a local or toll-free telephone number in its community of license. On October 28, 2003, SM failed to make a local or toll-free telephone number available for broadcast station KUOL or SM Radio, Inc., in San Marcos, TX. A telephone number was obtained for station KUOL on December 16, 2003, however the telephone number was disconnected or not in service.

¹ *Main Studio and Program Origination Rules*, 2 FCC Rcd 3215, 3217-18 (1987), *clarified*, 3 FCC Rcd 5024, 5026 (1988).

² *Id.*

³ *Jones Eastern of the Outer Banks, Inc.*, 6 FCC Rcd 3615, 3616 (1991), *clarified*, 7 FCC Rcd 6800 (1992).

⁴ *Id.*, 6 FCC Rcd at 3616 n.2; 7 FCC Rcd at 6800 n.4.

⁵ *Id.*, 7 FCC Rcd at 6802.

⁶ 47 C.F.R. § 73.1125(e).

8. Based on the evidence before us, we find SM willfully⁷ violated Section 73.1125 of the Rules by failing to maintain a main studio.

9. Pursuant to Section 1.80(b)(4) of the Rules,⁸ the base forfeiture amount for violation of main studio rule is \$7,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁹ Considering the entire record and applying the factors listed above, this case warrants a \$7,000 forfeiture.

IV. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,¹⁰ and Sections 0.111, 0.311 and 1.80 of the Rules,¹¹ SM Radio, Inc., is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of seven thousand dollars (\$7,000) for willful violation of Section 73.1125 of the Rules for failing to maintain a main studio in the community of license.

11. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, SM Radio, Inc., SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

12. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.¹²

13. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau-Spectrum Enforcement Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

14. The Commission will not consider reducing or canceling a forfeiture in response to a claim of

⁷ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act . . .” *See Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁸ 47 C.F.R. § 1.80(b)(4).

⁹ 47 U.S.C. § 503(b)(2)(D).

¹⁰ 47 U.S.C. § 503(b).

¹¹ 47 C.F.R. §§ 0.111, 0.311, 1.80.

¹² *See* 47 C.F.R. § 1.1914.

inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

15. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC’s Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

16. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to SM Radio, Inc., P.O. Box 252, McAllen, TX. 78502.

FEDERAL COMMUNICATIONS COMMISSION

James D. Wells
Dallas Office, Enforcement Bureau

Attachment